

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Implementation of Section 621(a)(1) of)	
the Cable Communications Policy Act of 1984)	MB Docket No. 05-311
as amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

COMMENTS OF QUEEN ANNE’S COUNTY (MARYLAND)

These Comments are filed by Queen Anne’s County in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Queen Anne’s County believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

Queen Anne’s County is a County with a population of 44,000. Our franchised cable provider is Atlantic Broadband (Delmar), LLC. Our community has negotiated cable franchises since 1980.

Our Current Franchise

Our current franchise began on July 6, 2004 and expires on July 5, 2014. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the County in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have one (1)

channel (or capacity) devoted to public access; one (1) channel (or capacity) devoted to educational access; and one (1) channel (or capacity) devoted to government access.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator: a one-time grant in the amount of \$25,000 upon signing of the franchise agreement (July 6, 2004) and two grants of \$10,000 each on the first and second anniversary of the franchise (July 6, 2005 and July 6, 2006).

Our franchise contains the following requirements regarding emergency alerts: *“As part of the upgrade/rebuild, Grantee shall provide the System capability to transmit an emergency alert signal consistent with current FCC requirements as they may change from time to time, to all participating Subscribers in the form of a video override capability and “text crawler” messaging capability to permit Grantor to interrupt and cablecast a video or textual message on all channels simultaneously in the event of disaster or public emergency.”* These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency. An example of when this function has been helpful is the following: Hurricane Isabel (September 2003) and Kent Island, whereby over half of our County’s population is located, was under severe flooding conditions. We were able to inform citizens where to go for Red Cross shelters and obtain potable water, food and temporary housing.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise:

(a) A Grantee shall put, keep and maintain all parts of a Cable System in good condition throughout the term of a Franchise.

(b) Upon the reasonable request for service by any Person located within a Grantee’s Franchise Area, the Grantee shall, within sixty (60) days, furnish the requested service to such person within the terms of the Line Extension Policy. A request for service shall be unreasonable for the purpose of this subsection if no trunk line installation capable of servicing that Person’s block has as yet been installed.

(c) A Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum System use.

(d) A Grantee shall not allow its Cable System or other operations to interfere with television reception of Subscribers or Persons not served by the Grantee, nor shall a System interfere with, obstruct or hinder in any manner the operation of the various utilities serving the residents within the confines of Queen Anne’s County, nor shall other utilities interfere with a Grantee’s System.

(e) A Grantee shall have knowledgeable, qualified Grantee representatives available to respond to customer telephone inquiries twenty-four (24) hours per day and seven (7) days per week. A staffed answering service, or an automated response system, shall be considered a qualified Grantee representative during evening and weekend hours.

(f) Under Normal Operating Conditions, telephone answer time, including wait time and the time required to transfer the call, shall not exceed thirty (30) seconds. This standard shall be met no less than ninety percent (90%) of the time as measured on a quarterly basis.

(g) Under Normal Operating Conditions, a customer will receive a busy signal less than three percent (3%) of the total time that the Grantee's office is open for business. This standard shall be met no less than ninety percent (90%) of the time as measured on a quarterly basis.

(h) Standard Installations will be performed within seven (7) business days after an order has been placed. A standard Installation is one that is within one hundred fifty (150) feet of an existing System.

(i) Excluding those situations which are beyond its control, a Grantee will respond to any Service Interruption promptly and in no event later than twenty-four (24) hours from the time the interruption becomes known. All other regular service requests will be responded to the next business day after notification of the service problem. The appointment window alternatives for Installations, service calls and other Installation activities will be: "morning;" or "afternoon;" not to exceed a four (4) hour "window" during Normal Business Hours for a System, or at a time that is mutually acceptable to a Grantee and a customer. A Grantee will schedule supplemental hours during which appointments can be scheduled based on the needs of the community. If at any time an installer or technician is running late, an attempt to contact the customer will be made and the appointment rescheduled as necessary at a time that is convenient to the customer.

(j) Unless otherwise provided for in the Franchise Agreement, a customer service center(s) and bill payment location(s) will be open for walk-in customer transactions a minimum of eight (8) hours a day Monday through Friday unless there is a need to modify those hours because of the location or customers served. A Grantee may, in its sole discretion, establish supplemental hours on weekdays and weekends if it would fit the needs of the community.

(k) In the event of an Outage of Subscriber Cable Service, the following shall apply after proper notification to Grantee:

(1) For Outages of over six (6) hours and up to seven (7) days, the Grantee shall provide, at a Subscriber's written request, a credit of one-

thirtieth (1/30) of one month's fees for affected services for each twenty-four (24) hour period service is interrupted for six (6) or more hours for any single Subscriber, with the exception of Subscribers disconnected because of non-payment or excessive signal leakage or circumstances beyond Grantee's reasonable control. For Outages lasting six (6) hours or less, the credit extended to a Subscriber shall be prorated on an hour for hour basis.

(2) For Outages of seven (7) days or more in one month which have been properly reported to Grantee and which are within the reasonable control of Grantee, the Grantee shall provide, at a Subscriber's written request, a full month's credit for affected services for affected Subscribers.

(l) A Grantee will provide written information in each of the following areas at the time of Installation and at any future time upon the request of the customer:

- (1) Product and services offered.*
- (2) Prices and Cable Service options.*
- (3) Installation and service policies.*
- (4) How to use the Cable Services.*

(m) Bills will be clear, concise and understandable, with all services itemized consistent with the federal law.

(n) Credits will be issued promptly, but no later than a customer's next billing cycle following the resolution of the request and the return of equipment to a Grantee if service has been terminated.

(o) Unless otherwise specified by FCC regulations, customers and the County will be notified a minimum of thirty (30) days in advance of any rate or programming Channel change, provided that the change is within the control of a Grantee.

(p) A Grantee shall maintain and operate its Cable System in accordance with the rules and regulations as are incorporated herein or may be promulgated by the FCC, the United States Congress, or the State.

(q) A Grantee shall continue, through the term of a Franchise, to maintain the technical standards and quality of service specified in this Title. Should the County find, by resolution, that a Grantee has failed to maintain these technical standards and quality of service, Grantee shall be required to implement a plan for resolution.

(r) A Grantee shall keep a record of monthly service calls which will indicate the nature of each service complaint received in the last twenty-four (24) months, the date and time it was received, the disposition of said complaint, and the time and date thereof. Upon reasonable notice, such records shall be made available to the County for inspection.

(s) All personnel of a Grantee contacting Subscribers or potential Subscribers outside the office of Grantee must be clearly identified as associated with the Grantee.

(t) The provisions of 29-914 notwithstanding, in the event a Grantee fails to arrive for Installations and/or service calls within the scheduled four (4) hour time frame set forth in this Title under Normal Operating Conditions less than ninety percent (90%) of the time as measured on a quarterly basis, then the County may impose a monetary penalty upon the Grantee. The amount of such monetary penalty shall be established by resolution of the County Commissioners. Prior to imposition of the penalty, the County shall notify the Grantee in writing of the alleged default. Upon receipt of the notice, the Grantee shall have a sixty (60) day period in which to correct the default or it may elect to pay such penalty, in which event the act or omission giving rise to the penalty shall not be the basis for any other sanction by the County. In the alternative, a Grantee shall have the right to request a hearing affording due process before the Board of County Commissioners to determine whether the penalty should be imposed, and the imposition of any such penalty shall be stayed pending the final outcome of such proceeding.

(u) A Grantee shall not terminate residential service for non-payment of a delinquent account unless the Grantee provides initial notice of the delinquency and impending termination at least ten (10) days prior to the proposed termination. Such notice of delinquency shall be mailed, postage prepaid, to the Subscriber to whom the service is billed. This notice shall not be sent until the twenty-eighth (28th) day after the initial bill for service was mailed to the Subscriber. The notice of delinquency and impending termination may be part of a billing statement. This section does not apply to Subscribers disconnected due to NSF (Not Sufficient Funds) checks.

(v) Refund checks shall be issued by a Grantee within thirty (30) days following a Subscriber's valid request.

Our franchise contains the following reasonable build schedule for the cable operator:

(a) Grantee shall rebuild, as appropriate, the existing Cable System to provide a capacity of at least eighty (80) channels of video programming as reflected in Exhibit B. The construction of the rebuilt Cable System must be completed within thirty (30) months after the effective date of this Agreement as reflected in Exhibit H. The Cable System, when completed, will be built with the capacity to immediately activate two-way service as provided in Section 5.01 of this Agreement. Further, to the extent construction of a node is

complete and two-way service to the area served by the node is available, Grantee may immediately activate two-way service in accordance with the provision of Section 5.01 of this Agreement. The items purchased for Charter Communications in assistance to upgrading purposes are reflected in Exhibit G.

(b) The Grantee has indicated that at the time of this Agreement, it cannot specify the number of additional channels that it will activate on the rebuilt Cable System, however, it is agreed by both the Grantor and Grantee that the purpose of rebuilding the Cable System is to offer more services and programming in future years.

(c) Thirty (30) days before the completion of the rebuilt Cable System, the Grantee shall notify the Grantor of the number of channels and types of services it intends to activate on the Cable System.

(d) System expansion will include the provision of cable service to all areas with twenty-five (25) or more residential or business structures per linear mile, provided the area is within one mile of active plant, or if otherwise economically feasible.

Our franchise requires that the cable operator currently provide service to the following areas of our community: System expansion will include the provision of cable service to all areas with twenty-five (25) or more residential or business structures per linear mile, provided the area is within one mile of active plant, or if otherwise economically feasible.

Our franchise contains a "most-favored-nations" provision which states the following: The material terms and conditions of any Franchise granted to any other cable provider or renewed after the effective date of this Agreement shall be no less burdensome or more beneficial than any other Franchise granted or renewed subject to this Ordinance as long as the services offered by another provider are materially similar to the services offered by the Grantee.

Our franchise contains the following insurance and bonding requirements: Grantee shall furnish to the Grantor a performance bond in the amount of Fifty Thousand Dollars (\$50,000), conditioned upon the faithful performance and discharge of the obligations imposed by this Agreement. When Grantee has completed one hundred percent (100%) of the upgrade to the cable system within the Franchise Area, the bond shall be reduced to Twenty Five Thousand Dollars (\$25,000) and shall be maintained throughout the term of the agreement. The form of the performance bond shall be acceptable to the Grantor's County Attorney.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way. Before commencing construction in, above, over, under, across, through or in any way connected with the Streets, public ways or public places of Queen Anne's County (other than such public areas not under the County's control), the Grantee shall obtain all required permits which Grantee reasonably can foresee to be necessary in the reasonable future (at the fees regularly charged therefore), including but not limited to the written approval of the County, which approval shall not be unreasonably withheld or delayed. The County may designate the location, manner and time of any construction within the roads and rights-of-way over which the County has jurisdiction.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: *Grantor shall have the right to inspect all construction, reconstruction or installation work performed by Grantee under the provisions of the Franchise and other pertinent provisions of law, to ensure Grantee's compliance and to protect the public health, safety and welfare of Grantor's citizens. Grantee shall have the right to be present at such inspections.*

The Franchising Process

The cable system(s) serving our community also serves many adjoining communities: Centreville, Chestertown, Kent County, Talbot County, St. Michaels, Trappe, Perryville, Chesapeake City, Middletown (DE), and Port Deposit, among others. In 2004 our community worked together with approximately a dozen other communities to issue a cable franchise for the Atlantic Broadband cable company. This allowed the company to quickly obtain franchises in these communities so as to be able to serve a large region, while also allowing for individual provisions in specific franchises in order to tailor them to meet local needs.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows:

(a) *Notwithstanding any other provisions of this Title to the contrary, a Grantee shall at all times comply with all laws and regulations of the local, State and federal government or any administrative agencies thereof; provided, however, if any such State or federal law or regulation shall require the Grantee to perform any service, or shall permit a Grantee to perform any service, or shall prohibit the Grantee from performing any service, in conflict with the terms of this Title or of any law or regulation of the County, then as soon as possible following knowledge thereof, the Grantee shall notify the County of the point of conflict believed to exist between such regulation or law and the laws or regulations of the County or this Title.*

(b) *If the County determines that a material provision of this Title is affected by any subsequent action of the State or federal government, the County shall modify any of the provisions herein to comply with such State or federal law or regulation to such reasonable extent as may be necessary to carry out the full intent and purpose of this Title and the Franchise Agreement, and to preserve the benefit of the bargain for each party.*

Competitive Cable Systems

Our community has actively sought out competitive providers, but has not been successful. Further, our community does have mechanisms in place to offer the same or a comparable franchise to a competitor upon request.

On at least three occasions within the past four years we have contacted a cable service provider in neighboring jurisdictions (Comcast) in regards to offering competitive service in our area. On all occasions, we were told that their entry would not be economically feasible, despite our community offering equal franchise treatment.

Conclusions

The local cable franchising process functions well in Queen Anne's County. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The Queen Anne's County therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

Queen Anne's County

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